

Title Guaranty Division Board Meeting Minutes

December 6, 2005

Board Members Present:

Walter Murphy
Berneil Preul (by phone)
Mitchell Taylor
Surasee Rodari
Catherine Hult (by phone)

Staff Members Present:

Loyd Ogle, Title Guaranty Director
Matt White, TGD Deputy Director
Dennis Dietz, IFA Director of Governmental
Affairs & Policy
Tim Jansen, IFA Accountant
Linda Berg, TGD Business
Development Director
Mark Thompson, IFA General Counsel
Joanna Wilson, TGD Senior Underwriter
Francisco Hernandez, IFA Marketing
Specialist
Susan Riedinger,
Administrative Assistant

Others Present:

Grant Dugdale – Attorney General's Office
Geraldine McLain – Abstract & Title Company, Mount Ayr
Gerald McClain – Abstract & Title Company, Mount Ayr
Virginia Bordwell – Day and Bordwell Abstracts; IFA Board Member
John Donohoe – Attorney
Michael Gorsline – Attorney (by phone)
John Eisenman – Iowa Land Title Association (by phone)

Call to Order

Chairman Mitch Taylor called the December 6, 2005, meeting of the Title Guaranty Board of Directors to order at 10:35 a.m.

Review & Approval of Board Meeting Minutes

Mr. Ogle informed the Board that Mr. Taylor would not vote on approval of the September 13, 2005, Board meeting minutes.

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the September 13, 2005, Board meeting minutes, with Mr. Taylor abstaining. Mr. Taylor noted that the minutes will be signed by Ms. Preul.

Ms. Preul said that her name was misspelled in the minutes and that it needed to be corrected.

Review & Approval of Financial Reports

Mr. Jansen explained the narrative for the financial results. He said performance targets were set at \$4.7 million in total revenue. After four months of activity, Title Guaranty is

at \$3.7 million for the year. Mr. Ogle discussed the financial report further with the Board.

Motion: On a motion by Mr. Rodari, seconded by Ms. Hult, the Board unanimously approved the financial report.

Transfer of Funds to IFA's Housing Programs

Mr. Jansen recommended that the amount for transfer be \$540,000.

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the transfer of \$540,000 to the Iowa Finance Authority's Housing Programs.

Business Development Director's Report

Ms. Berg delivered the business development report. She discussed the changes to be implemented January 1 that were designed to regain market share and to add volume. Those changes include new pricing, a nonpurchase product, and the rapid certificate program.

She said Title Guaranty's objective is to move certificate production from staff-issued to field-issued. She explained the ways that would be done, including paying attorneys to issue certificates.

Ms. Berg also discussed the activities Title Guaranty was doing to promote itself, such as advertisements, news stories, and one-on-one marketing.

Director's Report

Mr. Ogle gave the director's report. He explained that Ms. Berg's report was a partial overview of some of the items needing Board approval. Mr. Ogle discussed the new pricing structure in great detail to the Board. Pricing will be \$110 for any transaction of \$500,000 or lower, with owner's certificates costing another \$25. The most commonly used endorsements would be no charge.

He spent a lot of time talking to people in the field regarding what pricing should be. He determined that Title Guaranty has lost a significant amount of the market for mortgages above \$140,000 because other title insurance companies charge a flat fee.

Mr. Ogle has also been in negotiations with Wells Fargo. He told the Board that if Title Guaranty implements the pricing changes and the nonpurchase product, Wells Fargo will switch back to Title Guaranty.

He noted that two discounts will be eliminated under the new pricing policy: the \$20 attorney-issued discount and the discount for reissue of a Title Guaranty certificate.

Mr. Ogle and the Board discussed the changes amongst themselves and with Ms. Bordwell, an IFA Board member.

Motion: On a motion by Mr. Rodari, seconded by Mr. Murphy, the Board unanimously approved the new pricing effective January 1.

Mr. Ogle also discussed the nonpurchase product. He said the Title Guaranty Board does not have rulemaking authority. Rulemaking authority rests with the Iowa Finance Authority Board. Mr. Ogle will ask the IFA Board to notice these rules in a manner called emergency after notice. It will allow Title Guaranty to shorten the timeline between when this rule is noticed and when it is effective and legally enforceable. The normal rulemaking process is six months. Emergency after notice should allow this rule to be effective March 1, 2006.

Mr. Ogle said with the rule they can implement the nonpurchase product that would be available for refinances, lines of credit, and second mortgages. Title Guaranty lost most of that market to title insurance because the cost of the abstract continuation, full title opinion, and Title Guaranty premium does not make sense. Under the statutory mandate to facilitate loans to the secondary market, Title Guaranty is not meeting that mandate with its current product.

The Board discussed among themselves and with Ms. Bordwell the issues of the nonpurchase product. One of the issues involved going back to the last two warranty deeds. The Board deferred action until Ms. Wilson could be at the meeting to discuss technical questions about the program.

Mr. Ogle discussed compensation for field-issued certificates. He wants to authorize Title Guaranty after January 1 to contract with attorneys to be paid for issuing certificates in the field, with payments of \$40 for online issuance and \$20 for paper issuance. Attorneys would not be paid until they sign an agreement and are properly trained by Title Guaranty on Title Guaranty's system.

Motion: On a motion by Mr. Rodari, seconded by Mr. Murphy, the Board unanimously approved compensating attorneys for issuing certificates effective January 1.

Ms. Wilson joined in the Board discussion regarding the nonpurchase product. She answered questions regarding the use of the last two warranty deeds for the issuance of the nonpurchase product.

The Board discussed the rules regarding the nonpurchase product. Mr. Ogle said that the rulemaking process will provide for comment, and there will be opportunity to adjust the rules when the IFA Board adopts them in final form.

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the nonpurchase product rules subject to concerns regarding the definition of warranty deed and the requirement of going back to the last two warranty deeds being addressed.

Mr. Ogle discussed the resolution raising the reinsurance threshold to \$500,000. The resolution reads as follows:

"WHEREAS, the Iowa Finance Authority (the "Authority") is a public instrumentality and agency of the State of Iowa (the "State") established and empowered by the provisions

of Chapter 16 of the Code of Iowa, 2005, as amended, to issue title guaranty certificates (Certificates) on real property located in the State through its Title Guaranty Division (the "Division"): and

"WHEREAS, the Authority, through the Division is empowered by Chapter 16.5(15) Code of Iowa, 2005 to procure reinsurance against any loss in connection with said guaranties, and

"WHEREAS, the Division has since 1996 procured said reinsurance for Certificate coverage amounts exceeding \$250,000, and

"WHEREAS, the Division Board, at the Division Board Meeting March 1, 2005, the Board unanimously voted to follow the advice and recommendation of Demotech, Inc., an actuarial company consulted by the Division, regarding the reinsurance rate for guaranties: and

"WHEREAS, after consultation with Division personnel and Demotech, Inc, pursuant to a review of the Division claims and the amount paid to the reinsurance company for the reinsurance coverage, the Division has determined that it is in the best interest of the Division to raise the reinsurance coverage amounts for Certificate coverage amounts exceeding \$500,000 instead of \$250,000:

"NOW, THEREFORE BE IT RESOLVED By the Board of the Title Guaranty Division :

"That the reinsurance amount of the Division be raised such that reinsurance is procured for Certificate coverage amounts exceeding \$500,000, and that the necessary agreements be executed with the reinsurance company to accomplish this change."

Mr. Ogle said Demotech recommended that Title Guaranty raise its reinsurance rate. Currently Title Guaranty reinsures with the Florida Fund for transactions above \$250,000. The recommendation is to raise it to \$500,000. Mr. Taylor explained that currently Title Guaranty buys insurance to cover any risks over \$250,000, so Title Guaranty does not have to pay any claims over \$250,000. Now that is being raised to \$500,000.

Mr. Taylor asked if Title Guaranty had the reserves to cover the increase. Mr. Ogle said that Demotech probably will say that Title Guaranty is putting more into their reserves than they need to.

Motion: On a motion by Ms. Preul, seconded by Mr. Rodari, the Board unanimously approved raising the reinsurance rate from \$250,000 to \$500,000.

Mr. Ogle delivered the legislative update. He said the next legislative session is coming up. There was a title insurance bill introduced last year, so that's technically still alive this year. However, Mr. Ogle does not believe there will be a major push to pass it. There may be a bill to pass commercial title insurance that Mr. Ogle believes will not pass as well. Mr. Ogle has been working with the ILTA to get them off the title insurance bill and to build good relations with them. He said they will be taking another look at an

abstractor licensing bill they ran on behalf of the ILTA last legislative session, make changes to it, and work toward its passage.

The Board took a break at 12:12 p.m. and reconvened at 12:20 p.m.

Mr. Ogle backed up on the voting procedure regarding the premium rate structure. There was a specific resolution regarding the rates that he was asking the Board to approve, not just the rates themselves. Mr. Taylor read the resolution to the Board. The resolution reads as follows:

"WHEREAS, the Iowa Title Guaranty Board (the "Board"), in accordance with the statutory directives set forth in Chapter 16 of the Code of Iowa, as amended, works to operate a program to offer guaranties of real property titles in order to provide a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and to add to the integrity of the land-title transfer system in the State of Iowa; and

"WHEREAS, The administrative rules governing the Title Guaranty program state that the Board shall fix the fees or rates for the title guaranty program by resolution and may change the same from time to time in the same manner; and

"WHEREAS, the Board's staff has recommended that the Board adopt new rates as set forth on Exhibit A;

"NOW, THEREFORE, BE IT RESOLVED by the Board of the Title guaranty Division of the Iowa Finance Authority as follows:

"SECTION 1. The Board hereby adopts the residential premium rates as set forth on Exhibit A, hereto.

"SECTION 2. The Board authorizes the Director and Title Guaranty Division staff to work with Iowa Finance Authority staff to publicize and market the new rates and the products to which they apply."

Motion: On a motion by Mr. Murphy, seconded by Mr. Rodari, the Board unanimously approved the resolution changing the rate structure.

Deputy Director's Report

Mr. White gave the claims report. He said Title Guaranty has had some action in the claims area. He said as far as fiscal year 2006, there have been 16 claims made on the Division. The Division paid out on three claims in that same time frame to the total of about \$159,000. Those three claims came into the Division in fiscal year 2005, so they took some time to get through the system. One claim related to a judgment lien that was superior to the mortgage the Division guaranteed in first lien position for \$105,000. The others were mechanic's lien claims, one for \$25,000, one for \$28,000. The Division received an adverse judicial ruling on one of them after losing in litigation. The other one was fairly clear the Division would lose in court. Two claims are in settlement; one will be around \$20,000, the other about \$5,000.

Mr. White also gave the Mortgage Release Program report. It is about the same pace it has been in the past. The Division has had over 1,000 requests. He expects the program will increase in the amount that it is used. He said a lot of people are learning about it for the first time and are starting to use it. The Rapid Certificate Program will force some releases through the Mortgage Release Program, which will help pick up business as well.

After Mr. White's report, Mr. Ogle requested that Mr. Dugdale talk about what the standard for judicial review of a final action by a state agency because there has been a lawsuit filed in Des Moines County against Title Guaranty for approving a recent waiver. Mr. Dugdale explained that in judicial review, the nature of the review the court will look at depends on the nature of the action. This is considered other agency action, which means it is not rulemaking and it is not a contested case. The court does not look at the facts all over again and make decisions. It acts in an appellate capacity to review the Board's decision for errors of law and arbitrary, capricious action. It is difficult to establish capriciousness. The court would focus on whether the Board made an error of law.

Waiver Request—John Donohoe

Mr. Taylor said that he can participate in Mr. Donohoe's waiver request because there is no objection to it. Mr. Ogle reminded the Board of the standard for granting waivers.

Mr. Donahoe presented his request for the waiver. He has been practicing real estate law and abstracting since 1973. In Scott County, attorneys do a lot of the abstracting. He said the plant is labor intensive. When they are at the courthouse doing a record search, they involve themselves as attorneys and as abstractors in not only what the records say but the impact of those records on the titles. Mr. Donohoe also cited his abstracting experience and experience teaching abstracting classes. Mr. Donohoe asked the Board to put aside the fact that lawyers are asking to abstract and see the benefit of having attorneys abstract and continuing to promulgate the benefit of the Title Guaranty system, especially on Iowa's borders. He said he had the ability to run the records efficiently.

Mr. Ogle asked Mr. Donahoe why not granting a waiver would impose a hardship on him. Mr. Donohoe explained that the hardship would come from losing someone who abstracts and who has abstracted in the past. They are losing the people who can abstract without the waivers through retirement. Mr. Donohoe currently abstracts for a grandfathered attorney, and when he retires, Mr. Donohoe would no longer be able to abstract for Title Guaranty.

The Board and staff queried Mr. Donohoe regarding his application and discussed it.

Motion: On a motion by Ms. Hult, seconded by Ms. Preul, the Board unanimously granted Mr. Donohoe's application for waiver by a 5-0 vote by roll call. Aye: Ms. Preul, Ms. Hult, Mr. Rodari, Mr. Murphy, and Mr. Taylor.

Waiver Request—Michael Gorsline

Mr. Gorsline presented his request for waiver. The law firm he is a member of, Vollertson and Britt, has been abstracting since 1937. His partner, Dennis Britt, has been abstracting since 1959. Mr. Gorsline has been with the firm since 1998 and started abstracting right away. He abstracts under Mr. Britt's number. Mr. Gorsline described Scott County's unique situation. His firm has a lot of base abstracts and canned materials. It would be a hardship to him because abstracting is what he knows how to do and how he makes his living. He said it would be nice to have an individual number for him so his firm's tradition can continue and he can continue to abstract. He said it would be a detriment to his clients if he did not have an abstractor number.

The Board, staff, and Mr. Eisenman queried Mr. Gorsline regarding his application and discussed it.

Motion: On a motion by Mr. Rodari, seconded by Ms. Hult, the Board granted Mr. Gorsline's application for waiver by a 4-1 vote by roll call. Aye: Ms. Preul, Ms. Hult, Mr. Rodari, and Mr. Taylor. Nay: Mr. Murphy.

Waiver Request—Abstract and Title Company

Mr. McLain and Ms. McLain presented their request for a temporary waiver. Mr. McLain said they were in the process of building a 40-year title plant that will include patents and easements pertaining to all the properties as they go forward. Mr. Ogle explained that unlike the other two requests which were attorneys asking for a waiver of the plant requirements, this request is from abstractors who are in the process of building a 40-year plant that want a temporary waiver to allow them to abstract now instead of having to wait when the plant is totally complete. Mr. McLain said they presently own Union County Abstract in Creston, Iowa. Ms. McLain said they considered abstracting in Ringgold County for several years but recently were requested by several people who want to see better service there.

The Board, staff, and Mr. Eisenman queried Mr. McLain and Ms. McLain regarding their application and discussed it.

Motion: On a motion by Mr. Murphy, seconded by Ms. Hult, the Board granted Mr. McLain's and Ms. McLain's application for temporary waiver to the company for a period of no more than eight months, conditioned on the company's having the plant completed by the end of the eight months and applying for a permanent number, by a 4-0 vote by roll call, with Mr. Taylor abstaining. Aye: Ms. Preul, Ms. Hult, Mr. Rodari, and Mr. Murphy.

Miscellaneous

Mr. Ogle told the Board that since the Board approved Mr. Taylor's waiver at the last meeting, he received a number of letters expressing concern about the granting of waivers. He said there was an impression that the Board prefers abstracting via a courthouse search versus abstracting off of a plant that is not the sentiment of the Board. Mr. Ogle would like to work with the Board in drafting a letter to be sent directly to all the abstractors in Iowa. His sense in talking with the members of the Board is that generally the 40-year plant is the best way to abstract in most circumstances. He wants to draft the letter to assure people that waivers are granted very conservatively and the

Board is not moving to a situation where they will start waiving in attorney-abstractors. Mr. Taylor said he would prefer not to be involved in the drafting of the letter.

Next Meeting Date and Time

The next meeting date will be March 7th, 2006, at 10:30 a.m.

Adjournment

Motion: On a motion by Mr. Rodari, seconded by Mr. Murphy, the Board unanimously voted to adjourn at 1:50 p.m.

Dated this 7th day of March, 2006,

Respectively submitted:

Approved as to form:

Loyd W. Ogle, Director
Title Guaranty Division

Mitch Taylor, Chair
Title Guaranty Division